

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0380
Indiana Adjusted Gross Income Tax
For 1999 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Not-for-Profit Exemption – Individual Adjusted Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1(d) to (e); IC 6-8.1-5-1(f); IC 6-8.1-5-1(g) to (h); I.R.C. § 501; 26 CFR 301.6361-2(d); 26 CFR 301.6361-2(d)(2); Rev. Rul. 73-370, 1973-2 C.B. 184.

Taxpayer argues that he is not subject to Indiana Adjusted Gross Income Tax because any income he obtained was attributable to “not-for-profit activities.”

STATEMENT OF FACTS

The Indiana Department of Revenue (Department) determined that taxpayer owed state adjusted gross income tax for 1999 through 2001 and sent taxpayer a notice of “Proposed Assessment” addressing his potential state tax liability for 1999. The Department prepared the notice on September 13, 2004. Taxpayer's representative responded in a letter dated September 22, 2004. Taxpayer's letter stated that he “is disputing the . . . tax liability and is requesting appeals consideration of said tax liability.” In addition, taxpayer sent copies of correspondence with the IRS including an “Affidavit of Composite Return” which taxpayer cited as authority to “amend a previously filed 1040 return.” On the ground that taxpayer was engaged in “Not-for-Profit Activities,” taxpayer amended his original 1040 returns to reflect the assertion that his taxable income was reduced to “\$0.00 on said 1040 return.” Taxpayer arrived at this number by claiming a mandatory “not-for-profit deduction” equal to the amount of taxpayer income previously reported on the returns.

Despite taxpayer's assertion that “[t]he IRS Office of Appeals now has exclusive jurisdiction in this matter” and that any administrative decision the Department might make was “contrary to law,” the Department assigned taxpayer's protest to a hearing office. The Hearing Officer contacted taxpayer's representative in a letter dated August 3, 2005. Taxpayer declined the invitation to participate in an administrative hearing or to present additional information. This Letter of Findings is based upon the taxpayer's original protest letter and his subsequent correspondence.

DISCUSSION

I. Not-for-Profit Exemption – Individual Adjusted Gross Income Tax.

A. Jurisdiction: As a threshold issue, taxpayer challenges the Department's authority to act upon taxpayer's protest. According to taxpayer, the IRS "has exclusive jurisdiction in this matter. Any determination [the Department] might make after the Administrative Protest and Request for Appeals Conference was filed is contrary to law." Taxpayer cites as authority 26 CFR 301.6361-2(d) which states that:

General rule. Except as provided in subparagraphs (2) and (3) of this paragraph (d), the Federal Government shall appear on behalf of any State the qualified tax of which it collects (or did collect for the year in issue), and shall represent such State's interests in any administrative or judicial proceeding, either civil or criminal in nature, which relates to the administration and collection of such qualified tax, in the same manner as it represents the interests of the United States in corresponding proceedings involving Federal income tax matters.

Taxpayer interprets 26 CFR 301.6361-2(d) as requiring Indiana to accede to the federal government's representation in any civil or administrative proceeding stemming from taxpayer's protest. The Department must disagree with taxpayer's interpretation. 26 CFR 301.6361-2(d)(2) provides that:

The Federal Government shall not so represent a State's interests either--

- (i) In proceedings in a State court involving the constitution of such State, to the extent of such constitutional issue, or
- (ii) In proceedings in any court involving the relationship between the United States and the State, to the extent of the issue pertaining to such relationship, if either:
 - (A) The proceeding is one which is initiated by the United States against the State, or by the State against the United States, and no individual (except in his official capacity as a governmental official) is an original party to the proceeding, or
 - (B) The proceeding is not one described in (A), *but the State elects to represent its own interests to the extent permissible under this subdivision. (Emphasis added).*

Indiana has chosen to provide taxpayers an administrative remedy by which the individual taxpayer may challenge a proposed assessment, air his or her grievances, and receive a written response to that challenge. *See* IC 6-8.1-5-1(d) to (e). If the aggrieved taxpayer is dissatisfied with the Department's written response, Indiana has provided a method may seek supplemental administrative review *See* IC 6-8.1-5-1(f). In addition to the administrative remedies otherwise available, Indiana has provided taxpayers a judicial remedy by means of the Indiana Tax Court. *See* IC 6-8.1-5-1(g) to (h). The Department acted well within its authority to address taxpayer's state income tax protest notwithstanding taxpayer's parallel effort to resolve the related federal tax issues.

B. Not-for-Profit: Taxpayer states that, "The underlying tax claim is a not-for-profit activity." Based on this assertion, taxpayer concludes that the 1999 income is not subject to the state's income tax.

Certain types of organizations are exempt from income tax. To qualify for exempt status, the taxpayer must be formed for a designated charitable, nonprofit purpose, and its status as a tax exempt entity must be determined by the District Director. I.R.C. § 501; Rev. Rul. 73-370, 1973-2 C.B. 184.

Although taxpayer suggests that he is not subject to Indiana income tax, he has provided no evidence to substantiate that proposal and fails to carry his burden of demonstrating that he is entitled to the exemption. “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). Because taxpayer failed to meet the statutory mandate, the Department must deny taxpayer’s protest.

FINDING

Taxpayer’s protest is denied.

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